



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 695

IN THE MATTER
OF
DAVID BUNKER

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and David Bunker pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On November 12, 2003, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Bunker. The Commission has concluded its inquiry and, on December 16, 2003, found reasonable cause to believe that Bunker violated G.L. c. 268A, § 23(b)(2).

The Commission and Bunker now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Between January 2001 and January 2003, Bunker was a state representative from Rutland.
2. A member of the general court is entitled to receive a per diem allowance for each day that the member is present at the State House in the performance of his duties. Bunker's per diem allowance based on his residence in Rutland was \$36.ⁱ
3. In mid-July 2002, Bunker became sick with mononucleosis. While he was ill, Bunker was at the State House only on infrequent occasions. Bunker requested and received, however, per diem allowances for three to four days a week during the period of mid-July 2002 to mid-September 2002.
4. Bunker acknowledges that he was not entitled to approximately 30 per diem allowances paid to him during this period.ⁱⁱ

Conclusions of Law

5. Section 23(b)(2) prohibits public employees from, knowingly or with reason to know, using or attempting to use their official position to secure for themselves or others unwarranted privileges or exemptions of substantial value not properly available to similarly situated individuals.

6. As a state representative, Bunker was a state employee pursuant to G.L. c. 268A, § 1.

7. By certifying as a state representative to the state treasurer that he was present at the State House, Bunker used his state representative position to secure his per diem allowance.

8. Approximately 30 of the per diems Bunker received were an unwarranted privilege because he was not present at the State House on those days as required by G.L. c. 3, § 9B.

9. At \$36 per day, 30 per diems totaled \$1,080. Therefore, the privilege was of substantial value.

10. The privilege, which Bunker received, is not properly available to other members of the legislature as it is contrary to state law.

11. Thus, by receiving \$50 or more in travel per diems for days in which he was not present at the State House, Bunker knowingly used his state representative position to obtain an unwarranted privilege of substantial value not properly available to other similarly situated individuals in violation of §23(b)(2).

Resolution

In view of the foregoing violation of G.L. c. 268A by Bunker, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Bunker:

(1) that Bunker pay to the Commission the sum of \$2,000 as a civil penalty for violating G.L. c. 268A, § 23(b)(2);

(2) that Bunker reimburse the Commonwealth of Massachusetts the sum of \$1,080 as a civil forfeiture for the per diem allowances that he was not entitled to receive; and

(3) that he waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other

related administrative or judicial proceedings to which the Commission is or may be a party.

Date: December 18, 2003

ⁱG.L. c. 3, § 9B provides that Legislators are entitled to a \$7,200 annual payment for expenses. In addition, a “member of the general court who lives in . . . Rutland . . . shall receive a per diem allowance for mileage, meals and lodgings of thirty-six dollars per day . . .” Legislators are entitled to the per diem allowance whether the Legislature is in session or prorogued “upon certification to the state treasurer that he was present at the state house.”

ⁱⁱAccording to Bunker, he was present at the State House on some occasions while he was ill. During this period, however, he acknowledges that he did not, due to his illness and fatigue, maintain accurate records of his schedule and can not now determine exactly how many days he was present at the State House.